

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,259
)
Appeal of)

INTRODUCTION

Following consideration by the Board of an earlier Recommendation in this matter (a copy of which is attached hereto) the Board remanded the matter to the hearing officer for the taking of testimony regarding the availability of daytime jobs that the petitioner could perform which would pay her \$6.34 an hour. A hearing was held on April 24, 1991, for this purpose.

FINDINGS OF FACT

At the hearing the Department eschewed the opportunity to present evidence regarding the current market for jobs paying \$6.34 an hour and instead reiterated its position that under the regulations the petitioner's "capacity" to earn that amount is unrelated to the current job market in her community. However, other evidence adduced at this hearing renders consideration of this issue effectively moot.

That evidence is the fact that the Department collects child support payments on behalf of the petitioner in the amount of \$357.00 a month. The petitioner does not

dispute that these payments are regular and timely. If the petitioner were to stop receiving ANFC, these payments would be paid directly to the petitioner each month.

ORDER

The Department's decision is affirmed.

REASONS

This information substantially alters the legal assessment of the petitioner's eligibility for Reach Up. The Department's regulation, W.A.M. § 2340.2 (cited in the first Recommendation), states that Reach Up funding may be denied an individual who "has a work history which demonstrates his or her capacity to provide earnings which, in combination with the family's other income . . . would provide the family with an income above 125 percent of the applicable federal poverty line" (emphasis added).

When the petitioner's child support is factored in, she would need a full-time job paying only \$4.28 an hour in order to have total income of 125% of poverty level--not the \$6.34 an hour figure used as the basis for the earlier recommendation. \$4.28 an hour is equivalent to the recently-increased minimum wage. The petitioner does not dispute that there are daytime jobs available to her that pay minimum wage.

¹ Thus, whether or not the availability of jobs is a factor in assessing an individual's "capacity" to earn 125% of poverty-level wages, the petitioner in this case clearly has

this "capacity."

It is understandable that an individual of the petitioner's intelligence and experience would desire a better-paying job. It would also be reasonable if the Reach Up program supported individuals like the petitioner in that goal. However, it cannot be concluded that the regulations require the Department to provide Reach Up to individuals in the petitioner's circumstances--in fact, the regulations (which are based on federal guidelines) prohibit it, focusing instead on the more "hard-core" unemployed. While one can sympathize with a highly motivated individual like the petitioner who is denied participation in Reach Up, the program's preference in serving the more intractably impoverished ANFC population is hardly an unreasonable policy.

Inasmuch as the petitioner's circumstances clearly render her ineligible for Reach Up, the issue of the Department's policy of not considering the availability of jobs in assessing an individual's "capacity" for work need not be addressed.² For the reasons stated above, the Department's decision is affirmed.

FOOTNOTES

¹The petitioner lives in Burlington and, as noted previously, has an excellent work history.

²This is not to say that this issue cannot or will not be considered in future cases if the facts so warrant.

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